

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**JOINT STATUS REPORT OF AMBAC ASSURANCE CORPORATION AND THE
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS
REPRESENTATIVE OF THE COMMONWEALTH OF PUERTO RICO, AND THE
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY
PURSUANT TO THE COURT'S NOVEMBER 12, 2020 ORDER**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Ambac Assurance Corporation (“Ambac”) and the Financial Oversight and Management Board for Puerto Rico (the “Board”), as representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the Board, the “Government Parties”),² respectfully submit this Joint Status Report pursuant to the Court’s order dated November 12, 2020 (ECF No. 15093) (the “November 12 Order”).

I. PROCEDURAL BACKGROUND

1. On October 28, 2019, Ambac filed *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (ECF No. 9022) (the “Assets Motion”), and *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis* (ECF No. 9023) (the “Cash Motion” and, together with the Assets Motion, the “Original Rule 2004 Motions”).

2. On November 8, 2019, the Government Parties filed the *Urgent Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Fiscal Agency and Financial Advisory Authority to Strike (A) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets [ECF No. 9022] and (B) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis [ECF No. 9023] and for Sanctions* (ECF No. 9131) (the “Motion to Strike”).

² Ambac and the Government Parties are collectively referred to as the “Parties.”

3. On January 23, 2020, Judge Swain issued a memorandum order denying the Motion to Strike (ECF No. 10332) (the “Memorandum Order”). The Memorandum Order directed the Parties to meet and confer by February 3, 2020 concerning the scope and mechanics of discovery responsive to the Original Rule 2004 Motions. *Id.* at 9.

4. Since the Memorandum Order was entered, the Parties have filed periodic status reports regarding their meet-and-confers. Most recently, on November 5, 2020, the Parties filed the *Joint Status Report of Movant Ambac Assurance Corporation and Respondents the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority with Respect to the Rule 2004 Motions* (ECF No. 15025) (the “November 5 Joint Status Report”). The November 5 Joint Status Report advised that the Parties are continuing to discuss several of Ambac’s cash- and assets-related requests, had reached an impasse with respect to Ambac’s requests for Calculation Back-Up, Process Documents, and Process Communications,³ and would submit an informative motion to schedule briefing on the issues as to which the Parties reached an impasse. November 5 Joint Status Report at 3-5.

5. On November 12, 2020, the Court (Dein, M.J.) entered the November 12 Order denying without prejudice the Original Rule 2004 Motions, stating that “[i]n light of the substantial work the [P]arties have done narrowing the issues and resolving disputes initially presented in the [Original] Rule 2004 Motions[,] . . . and to avoid confusion of the record,” Ambac should file “a new Rule 2004 motion limited to the issues in dispute.” November 12 Order at 2. The Court also directed the Parties to file a further status report by December 4, 2020, with a schedule for the anticipated new Rule 2004 motion. *Id.*

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the November 5 Joint Status Report.

6. On November 20, 2020, Ambac filed the *Informative Motion of Ambac Assurance Corporation with Respect to Its Motion Concerning Cash Rule 2004 Discovery* (ECF No. 15219) (the “Informative Motion”) that set forth the briefing schedule agreed upon by Ambac and the Board for a new Rule 2004 motion directed to the Calculation Back-Up, Process Documents, and Process Communications. The Informative Motion further advised that both the Board and AAFAF continue to meet-and-confer with Ambac regarding certain other cash- and assets-related requests and a further status report regarding those discussions would be filed on December 4, 2020, consistent with the November 12 Order. Informative Motion at 2.

7. On November 20, 2020, Ambac filed its New Cash Rule 2004 Motion,⁴ “limited to the issues in dispute[,]” pursuant to the November 12 Order.⁵ On November 24, 2020, the Court approved the briefing schedule set forth in the Informative Motion (ECF No. 15232) for the New Cash Rule 2004 Motion.

II. THE PARTIES’ PROGRESS SINCE THE PREVIOUS UPDATE TO THE COURT

8. Since the filing of the November 5 Joint Status Report, the Parties have continued to exchange correspondence⁶ and met-and-conferred telephonically on December 3, 2020. The status of the Parties’ discussions relating to assets and cash document requests is as follows:

⁴ “New Cash Rule 2004 Motion” refers to *Ambac Assurance Corporation’s Motion for an Order Directing Cash Rule 2004 Discovery from the Financial Oversight and Management Board for Puerto Rico* (ECF No. 15220).

⁵ Though the New Cash Rule 2004 Motion was limited to the issues for which the Parties have reached an impasse, Ambac reserves its right to seek additional judicial relief in the event the Parties reach an impasse with regard to other cash- and assets-related requests. *See also* New Cash Rule 2004 Motion at 1 n.3.

⁶ The Parties’ positions with regard to each of Ambac’s requests since the filing of the November 5 Joint Status Report are memorialized in the following correspondence: (i) the Board’s letter to Ambac dated November 16, 2020 (attached hereto as Exhibit A); (ii) Ambac’s letter to the Government Parties dated November 25, 2020 (attached hereto as Exhibit B); and (iii) AAFAF’s letter to Ambac dated December 4, 2020 (attached hereto as Exhibit C).

A. Status of Assets Requests (Directed Principally to AAFAF)

9. The Parties continue to negotiate in good faith regarding Ambac's Prioritized Assets Requests.

10. AAFAF continues to consider and to investigate the availability of documents responsive to the document requests identified in the November 5 Joint Status Report related to: (i) the prioritized Commonwealth asset list identified by Ambac; (ii) certifications and related documents submitted by Commonwealth entities in response to an AAFAF memorandum; (iii) requests to purchase and efforts to value and sell CRIM's tax arrears portfolio; and (iv) owner- and -property specific tax information. AAFAF has also agreed to investigate whether certifications or similar documents regarding real property owned by the prioritized Commonwealth entities identified by Ambac in its November 25, 2020 letter are available.

B. Status of Cash Requests (Directed Principally to the Board)

11. The Parties continue to negotiate in good faith regarding Ambac's Prioritized Cash Requests that are unrelated to the New Cash Rule 2004 Motion. Briefing for the New Cash Rule 2004 Motion is scheduled to be completed by January 8, 2021.

12. The Government Parties have agreed to investigate whether a more up-to-date version of the "Inventory of Central Government's Bank Accounts" referenced in the Amended Disclosure Statement is available, and to investigate Ambac's questions regarding "restrictions" on five categories of bank accounts identified by Ambac.

13. The Board has agreed to reproduce a small number of factual source materials and raw data underlying the Duff & Phelps Report and October 2 Presentations with certain redactions removed, provide additional information concerning "notations" that were removed from certain previously produced documents, and provide additional information concerning the first entry on the Board's revised privilege log. The Board has also agreed to consider Ambac's request for

factual source materials and raw data underlying materials distributed in connection with the Board's October 30, 2020 public meeting regarding the Commonwealth's cash balances and purported restrictions on such cash, and to provide an update in writing to Ambac on all outstanding issues.

III. PROPOSED NEXT STEPS

14. The Parties have agreed to continue to meet and confer regarding Ambac's assets- and cash-related requests that are unrelated to Ambac's New Cash Rule 2004 Motion, and would propose to have an additional meet-and-confer no later than January 15, 2021 and to submit a further status report to the Court on January 21, 2021.

Dated: December 4, 2020
San Juan, Puerto Rico

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CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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